



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 11, 1996

Ms. Jennifer D. Soldano
Assistant General Counsel
Texas Department of Transportation
DeWitt C. Greer State Highway Building
125 E. 11th Street
Austin, Texas 78701-2483

OR96-2352

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102428.

The Texas Department of Transportation (the "department") received a request for information regarding the decision to place a traffic control device at a particular intersection. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

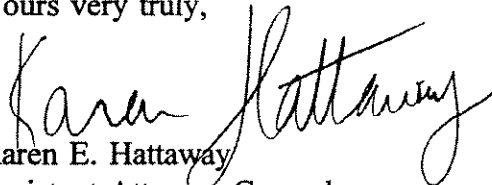
Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that federal law prohibits release of the requested information. Section 409 of title 23 of the United States Code provides:

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled for the purpose of identifying[,], evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 152 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

You argue that "[i]t would certainly seem a circumvention of that federal statute to allow compulsory production of that information by invoking the Texas Public Information Act." However, chapter 552 of the Government Code differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. Attorney General Opinion JM-1048 (1989); *see* Open Records Decision No. 575 (1990) (section 552.101 does not encompass discovery privileges); Gov't Code § 552.005 (chapter 552 does not authorize withholding public information or limit availability of public information to public except as expressly provided by chapter 552). The statute on which the department relies regulates discovery in court proceedings and not the availability of information under chapter 552 of the Government Code.¹ Therefore, the department may not withhold the requested information under section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 102428

Enclosures: Submitted documents

cc: Mr. Larry W. Lawrence, Jr.
Dale & Klein, L.L.P.
6301 N. Tenth Street
McAllen, Texas 78504
(w/o enclosures)

¹We note that at least one court decision implicitly recognizes that the information encompassed by this federal statute may be used by a newspaper in an article about the hazardousness of a particular railroad crossing. *See Robertson v. Union Pac. R.R.*, 954 F.2d 1433, 1435 (8th Cir. 1992).